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COMMITTEE AGAINST TORTURE

Twentieth session

SUMMARY RECORD OF THE PUBLIC PART* OF THE 323rd MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 6 May 1998, at 3 p.m.

Chairman: Mr. BURNS

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* The summary record of the closed part of the meeting appears as document CAT/C/SR.323/Add.1.

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GE.98-16005 (E)

The meeting was called to order at 3.05 p.m

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 7) (continued)

Second periodic report of France (continued) (CAT/C/17/Add.18)

Conclusions and recommendations of the Committee

1. At the invitation of the Chairman, Mrs. Bouveau (France) took a place at the Committee table.

2. The CHAIRMAN invited the Country Rapporteur to read out the conclusions and recommendations adopted by the Committee concerning the second periodic report of France.

3. Mr. CAMARA (Country Rapporteur) read out the following text:

"The Committee considered the second periodic report of France (CAT/C/17/Add.18) at its 320th, 321st and 322nd meetings, on 6 May 1998 (CAT/C/SR.320, 321 and 322) and adopted the following conclusions and recommendations:

A. Introduction

1. The Committee is gratified to note that the second periodic report of France complies with the General Guidelines for Periodic Reports (CAT/C/14), although it was submitted some six years late.

2. The Committee listened with great interest to the oral presentation which, like the report, sought to be honest, specific and comprehensive, and to the explanations and clarifications furnished by the French delegation, which displayed a clear desire for constructive dialogue and a solid professionalism.

3. The Committee is particularly gratified at the fact that the composition and size of the delegation clearly demonstrated France's interest in the Committee's work.

B. Positive aspects

1. The manifest determination of the French Government to combat torture, shown in particular in certain provisions of a new Criminal Code, e.g. articles 221-1, 222-1 and 432-4 to 432-6;

2. The numerous projected improvements to legislation and current practice, such as the creation of a supreme ethics council; the drafting of a practical ethics handbook for use by the police forces; the guidelines on prison monitoring; the reactivation of the supreme prison administration council; the principle that a lawyer should be present from the outset of custody for most offences and the curtailment of the duration of pre-trial detention;

3. The announcement of a further contribution to the United Nations Voluntary Fund for Victims of Torture.

C. Factors and difficulties impeding the application of the provisions of the Convention

The Committee notes that there are no particular impediments to the implementation of the Convention in France.

D. Subjects of concern

1. The absence, in French positive law, of a definition of torture which conforms fully with article 1 of the Convention.

2. The system of 'appropriateness of prosecution', leaving public prosecutors free to decide not to prosecute perpetrators of acts of torture, nor even to order an inquiry, which is clearly in conflict with the provisions of article 12 of the Convention.

3. The procedure for taking evidence does not explicitly prohibit the courts from admitting evidence obtained under torture and therefore contravenes article 15 of the Convention.

4. The Committee is seriously concerned at the practice whereby the police hand over individuals to their counterparts in another country, despite the fact that a French court had declared such practices to be illegal, which is contrary to the duties of the State party under article 3 of the Convention.

5. The Committee is concerned about sporadic allegations of violence committed by members of the police and gendarmerie at the time of arrest of suspects and during questioning.

E. Recommendations

1. The State party should consider incorporating into its criminal law a definition of torture which conforms with article 1 of the Convention.

2. The State party should pay greater attention to the provisions of article 3 of the Convention, which applies equally to expulsion, refoulement and extradition and, as demanded by a number of non-governmental organizations and as proposed by the National Advisory Committee on Human Rights, the possibility should exist of lodging a suspensive appeal against a refusal to allow entry into France and subsequent refoulement.

3. The Committee urges the State party to pay the maximum possible attention to allegations of violence by members of the police forces, with a view to instigating impartial inquiries and in proven cases applying appropriate penalties.

4. In this connection, and in the interest of conforming with the letter and spirit of article 12 of the Convention, the State party should consider abrogating the current system of 'appropriateness of prosecution' in order to remove all doubt regarding the obligation of the competent authorities to institute systematically and on their own initiative impartial inquiries in all cases where there are reasonable grounds for believing that an act of torture has been committed anywhere within the territory under their jurisdiction.

5. The State party is invited to submit its third periodic report as soon as possible in order to adhere to the schedule for the submission of reports laid down in the Convention."

4. Mrs. BOUVEAU (France) thanked the Committee and undertook immediately to forward the Committee's conclusions and recommendations to Paris, where they would be studied closely. The Committee would be informed of progress in acting upon its recommendations.

5. The CHAIRMAN thanked the French Government for its cooperation. He looked forward to receiving the third periodic report of France.

6. The delegation of France withdrew.

The public part of the meeting was suspended at 3.15 p.m. and resumed at 3.30 p.m.

Third periodic report of Norway (continued) (CAT/C/34/Add.8)

7. At the invitation of the Chairman, Mr. Wille and Mrs. Indreberg (Norway) took places at the Committee table.

8. The CHAIRMAN invited the delegation of Norway to reply to the questions asked by members of the Committee at the previous meeting.

9. Mr. WILLE (Norway) said that he would request detailed information in writing on the education of doctors and nurses, as requested by Mr. Sørensen. In response to Mr. Sørensen's and Mr. Mavrommatis' questions concerning paragraph 9 of the report, the discrepancy between figures was due to the fact that the first figure included all reported allegations of possible criminal acts committed by the police, while the second referred specifically to allegations of police brutality.

10. With regard to Mr. Yakovlev's question as to whether the expulsion of foreigners after serving prison sentences might be construed as double punishment, the fact that the relevant provision was embodied in the Immigration Act, and not in the Penal Code, demonstrated that it was not considered an additional punishment. Analogous to the removal of a driving licence for drunken driving, the provision permitted the immigration authorities to decide whether a foreign national who had been involved in serious crimes continued to be welcome in Norway. Nonetheless, the measure would not be applied in cases where it would constitute a disproportionate reaction against that person or against family members. Foreign nationals who had committed serious crimes were thus not automatically expelled and when

expulsion orders were issued, multiple appeal mechanisms existed. While four recent expulsion orders had been upheld after thorough scrutiny, by the Supreme Court in view of the seriousness of the crimes, expulsion orders had not been issued in other cases of serious offences such as drug trafficking on account of the close family and other connections of the individuals in question with Norway.

11. Concerning the length of detention of asylum seekers, the relevant section of the Criminal Procedure Act had been amended in 1992, following some criticism, with a view to reducing the possibility of detention in excess of 12 weeks. Further measures, such as better police training and increased centralization of cases, were being considered. The Norwegian Supreme Court had ruled that the criteria for extradition had been met in the case, raised by Mr. Camara, of the three Iranian hijackers extradited from Norway to Russia. The Government had decided to give effect to the court's decision since it did not in any way contravene national or international law. In view of the concern that they might subsequently be sent to Iran, notes had been exchanged between the Russian and Norwegian Governments, and the latter had made extradition conditional upon an undertaking by the Russian Government that the death sentence would not be applied, that the three Iranians would not subsequently be extradited to any Islamic country, and that they could be visited at any time. The Norwegian Embassy in Moscow had on several occasions visited the hijackers prior to their release from prison, after which they had remained in Russia.

12. Mrs. INDREBERG (Norway) assured Mr. Sørensen and Mr. Mavrommatis that the commission which was redrafting the penal code would be informed of their suggestion that torture should be defined and made a crime in Norwegian law, separate from rape, assault and other crimes, and that the Ministry of Justice would consider whether the commission should be asked to include the specific crime of torture in its draft penal code. Meanwhile, the fact that the prohibition contained in article 15 of the Convention against Torture was recognized in international law and derived from a treaty obligation that had been entered into by Norway, meant that it had in fact been incorporated into the Norwegian Criminal Procedure Act and could be directly invoked.

13. The human rights bill had not been presented in 1997, but she hoped it would be possible to present it before parliament's summer break in 1998.

14. Norway had taken note of the view expressed that the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment should be incorporated into the laws of the land. It was, however, unlikely that the Convention would be included in the forthcoming human rights bill.

15. Isolation of persons remanded in custody was not solitary confinement but a measure taken in application of a court decision that a person remanded in custody should not receive visits or send or receive letters, or that there should be restrictions on those rights to facilitate police investigations. It was unlikely that the measure would be abolished. However, under the Criminal Procedure Act such restrictions must not be used to a greater extent than necessary in the interest of investigating a case. The courts must also assess whether those restrictions were justified. The Director-General of

Public Prosecutions instructed subordinate prosecuting authorities not to apply for restrictions of that nature for more than four weeks at a time, and the prosecuting authorities could themselves lift them.

16. The Prison Board had issued guidelines to prison directors on the treatment of remand prisoners. They ensured that the prosecuting authorities were contacted when circumstances arose that could be significant for continuance of restrictions. They also focused on measures that could be used to remedy or mitigate the harmful effects of isolation and the lack of human contact that remand prisoners subject to such restrictions suffered, for example by designating a staff member to maintain contact with the prisoner or extending the time allotted to outdoor exercise, employment and other activities. Prison directors had also been requested to consider the possibility of making the prison visitor service available to remand prisoners, particularly those subject to restrictions.

17. Replying to Mr. Sørensen's question as to whether a judge who had decided that a person in custody should be denied visits or the right to send and receive letters would also try the case, she said that the judge concerned could take part in the criminal proceedings but would not decide alone upon the question of guilt; in county courts, there would be at least three judges, two of whom were lay magistrates, to decide on guilt or innocence.

18. Within the central prison administration, an inspection team of four persons regularly visited all prisons in Norway. It issued a report after each inspection, so there was no annual report as such. The reports were passed on to the central prison administration and to the prison in question.

19. There was also a board of supervisors, headed by a judge and at least three other persons, for each prison. None of the members of the board could be employed by the prosecuting or police authorities or in the prison administration. Men and women were represented on the board and if the prison was for women only it must have at least two women members. Boards could visit prisons unannounced and must visit each one at least four times a year. They were free to speak to any prisoner without the presence of a prison official during their visits. Prisoners could send complaints to the boards, which could prompt a visit to the prison in question. The boards reported annually to the central prison administration. The reports were public, except for specific information relating to security arrangements.

The public part of the meeting was suspended at 3.55 p.m. and resumed at 4.50 p.m.

20. Mr. SØRENSEN (Country Rapporteur) read out the Committee's conclusions and recommendations on the third periodic report of Norway:

> "The Committee considered the third periodic report of Norway (CAT/C/34/Add.8) at its 222nd and 223rd meetings held on 6 May 1998 (CAT/C/SR.322 and 323) and adopted the following conclusions and recommendations:

A. Introduction

The third periodic report of Norway was submitted on 6 February 1997. It conformed fully to the requirements laid down in the reporting guidelines: an article-by-article description of new measures taken since the submission of the previous report and answers to questions raised during the discussion of the second periodic report. The Committee also thanks the Norwegian delegation for its oral report and its frank and precise replies to the questions raised by members of the Committee.

B. Positive aspects

1. Norway's continuous endeavours to secure respect for human rights, including the prohibition of torture, in law and in practice, inter alia, through the creation and constant development of institutions such as the special investigative bodies (SIBs).

2. The generous donation to the United Nations Voluntary Fund for Victims of Torture.

C. Factors and difficulties impeding the application of the provisions of the Convention

[No observations]

D. Subjects of concern

1. The Committee is concerned that Norway has still not introduced the offence of torture into its penal system, including a definition of torture in conformity with article 1 of the Convention.

2. The Committee is concerned about the institution of solitary confinement, particularly as a preventive measure during pre-trial detention.

E. Recommendations

1. The Committee reiterates the recommendation it made during its consideration of the State party's initial and second periodic reports that Norway should incorporate into its domestic law provisions relating to the crime of torture that are in conformity with article 1 of the Convention.

2. Save in exceptional circumstances, inter alia, when the safety of persons or property is involved, the Committee recommends that the use of solitary confinement should be abolished, particularly during pre-trial detention, or at least that it should be strictly and specifically regulated by law and that judicial supervision should be strengthened."

21. Mr. WILLE (Norway) said that he had taken due note of the conclusions and recommendations and would bring them to the attention of the competent authorities in Norway. The delegation's dialogue with the Committee had been very productive and had offered an excellent opportunity for stock-taking of Norwegian legislation and practice in the area covered by the Convention.

22. The CHAIRMAN said that the Committee looked forward to continued cooperation with Norway, which might well be the first State party to submit a fourth periodic report.

23. The delegation of Norway withdrew.

The meeting rose at 5 p.m.